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EXAMINER
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DUNWOODY, AARON M

ART UNIT	PAPER NUMBER
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3679

DATE MAILED: 01/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/811,166

Applicant(s)

RICHTER ET AL.

Examiner

Aaron M Dunwoody

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 October 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 October 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Information Disclosure Statement***

No information disclosure statement submitted.

### ***Oath/Declaration***

The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

It does not identify the city and either state or foreign country of residence of each inventor. The residence information may be provided on either on an application data sheet or supplemental oath or declaration.

### ***Drawings***

The drawings are objected to because reference numbers cannot be shared between different figures. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be

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labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "9" has been used to designate both a nut and a bolt. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: 13.1. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the

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changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

The disclosure is objected to because of the following informalities:

The Applicant should update the continuation information, i.e., application serial no. 10/433,182 is now abandoned.

Paragraph 004 of the disclosure should be deleted, because the specification is intended to support and breathe life into the claims, not vise versa.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 28 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 28, the phrase "labyrinth-like" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "labyrinth-like"), thereby rendering the scope of the claim(s) unascertainable.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 9 and 11-13 are rejected under 35 U.S.C. 102(b) as being anticipated by US patent 4790574, Wagner et al.

In regards to claim 1, Wagner et al disclose a clamp for connecting a first end of a flexible tubing or pipe to a second end of a pipe, comprising:

a clamping band (72) configured to mate over the first and second ends;  
opposite-lying flange segments extending substantially radially outward from the clamping band, and

means for preventing tension from spreading (123) the clamping band, the spreading prevention means being disposed in a region proximate at least one of the opposite-lying flange segments.

In regards to claim 9, Wagner et al disclose the spreading prevention means being a rotation lock for tightening the clamping band on the first and second ends.

In regards to claim 11, Wagner et al disclose a bolt having a polygon portion formed on the bolt, the polygon portion being accommodated by a correspondingly formed hole in the opposite-lying flange segments in a manner that prevents rotation of the bolt.

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In regards to claim 12, Wagner et al disclose a nut (102) for attachment to the bolt, the nut having an undercut for accommodating a region of the polygon portion.

In regards to claim 13, Wagner et al disclose the spreading prevention mean being disposed on the opposite lying flange segments.

Claims 1, 2, 10, 13, 21 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by US patent 3944265, Hiemstra et al.

In regards to claim 1, Hiemstra et al disclose a clamp for connecting a first end of a flexible tubing or pipe to a second end of a pipe, comprising:

a clamping band (21) configured to mate over the first and second ends;  
opposite-lying flange segments extending substantially radially outward from the clamping band, and

means for preventing tension from spreading (30) the clamping band, the spreading prevention means being disposed in a region proximate at least one of the opposite-lying flange segments.

In regards to claim 2, Hiemstra et al disclose the region being an angle defined between band and the opposite-lying flange segments.

In regards to claim 10, Hiemstra et al disclose the opposite-lying flange segments having reinforcing plates (27).

In regards to claim 13, Hiemstra et al disclose the spreading prevention mean being disposed on the opposite lying flange segments.

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In regards claim 21, Hiemstra et al disclose a sealing element (27) arranged between one the opposite-lying flange segments.

In regards claim 22, Hiemstra et al disclose the sealing element being strip-shaped.

Claims 1, 3, 4, 13-17 and 19-21 are rejected under 35 U.S.C. 102(b) as being anticipated by US patent 5131698, Calmettes et al.

In regards to claim 1, Calmettes et al disclose a clamp for connecting a first end of a flexible tubing or pipe two a second end of a pipe, comprising:

a clamping band (1) configured to mate over the first and second ends;  
opposite-lying flange segments extending substantially radially outward from the clamping band, and

means for preventing tension from spreading (5) the clamping band, the spreading prevention means being disposed in a region proximate at least one of the opposite-lying flange segments.

In regards to claim 3, Calmettes et al disclose the spreading prevention means having at least one rib.

In regards to claim 4, Calmettes et al disclose the rib being a molded bead disposed at the region.

In regards to claim 13, Calmettes et al disclose the spreading prevention mean being disposed on the opposite lying flange segments.

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In regards to claim 14, Calmettes et al disclose the clamping band having two free ends defining a gap between the two free ends the a being saddled by a sliding crosspiece (8).

In regards to claim 15, Calmettes et al disclose the sliding crosspiece being essentially square.

In regards to claim 16, Calmettes et al disclose the sliding crosspiece having a stepped impression.

In regards to claim 17, Calmettes et al disclose the stepped impression prior to assembly, extends only over a part a perimeter of the sliding crosspiece, and wherein the sliding crosspiece, prior to assembly, is essentially flat along a remaining part of the perimeter.

Note, a comparison of the recited process with the prior art processes does NOT serve to resolve the issue concerning patentability of the product. In re Fessman, 489 F2d 742, 180 U.S.P.Q. 324 (CCPA 1974). Whether a product is patentable depends on whether it is known in the art or it is obvious, and is not governed by whether the process by which it is made is patentable. In re Klug, 333 F2d 905, 142 U.S.P.Q. 161 (CCPA 1964). In an ex parte case, product-by-process claims are not construed as being limited to the product formed by the specific process recited. In re Hirao et al., 535 F2d 67, 190 U.S.P.Q. 15, see footnote 3 (CCPA 1976). Therefore, the limitations of the stepped impression prior to assembly, extends only over a part a perimeter of the sliding crosspiece, and wherein the sliding crosspiece, prior to assembly, is essentially flat along a remaining part of the perimeter is given little patentable weight.

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In regards to claim 19, Calmettes et al disclose the sliding crosspiece being made of a high-strength material.

In regards to claim 20, Calmettes et al disclose the sliding crosspiece being made of a deformable material.

In regards to claim 21, Calmettes et al disclose a sealing element (8) arranged between one the opposite-lying flange segments.

Claims 1-3, 5-8, 13-18 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by US patent 5383496, Bridges et al.

In regards to claim 1, Bridges et al disclose a clamp for connecting a first end of a flexible tubing or pipe two a second end of a pipe, comprising:

a clamping band (20) configured to mate over the first and second ends;  
opposite-lying flange segments (52, 54) extending substantially radially outward from the clamping band, and

means for preventing tension from spreading (56) the clamping band, the spreading prevention means being disposed in a region proximate at least one of the opposite-lying flange segments.

In regards to claim 2, Bridges et al disclose the region being an angle defined between the clamping band and the opposite-lying flange segments.

In regards to claim 3, Bridges et al disclose the spreading prevention means having at least one rib.

In regards to claim 5, Bridges et al disclose the rib being an angle sheet iron.

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In regards to claim 6, Bridges et al disclose the rib being arranged on an outer edge of the clamping band.

In regards to claim 7, Bridges et al disclose the rib being secured to the clamping band by a weld.

In regards to claim 8, Bridges et al disclose the spreading prevention means being a welded region for securing the opposite-lying, flange segments to the clamping band.

In regards to claim 13, Bridges et al disclose the spreading prevention mean being disposed on the opposite lying flange segments.

In regards to claim 14, Bridges et al disclose the clamping band having two free ends defining a gap between the two free ends being saddled by a sliding crosspiece (74).

In regards to claim 15, Bridges et al disclose the sliding crosspiece being essentially square.

In regards to claim 16, Bridges et al disclose the sliding crosspiece having a stepped impression.

In regards to claim 17, Bridges et al disclose the stepped impression prior to assembly, extends only over a part a perimeter of the sliding crosspiece, and wherein the sliding crosspiece, prior to assembly, is essentially flat along a remaining part of the perimeter.

Note, a comparison of the recited process with the prior art processes does NOT serve to resolve the issue concerning patentability of the product. In re Fessman, 489

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F2d 742, 180 U.S.P.Q. 324 (CCPA 1974). Whether a product is patentable depends on whether it is known in the art or it is obvious, and is not governed by whether the process by which it is made is patentable. In re Klug, 333 F2d 905, 142 U.S.P.Q. 161 (CCPA 1964). In an ex parte case, product-by-process claims are not construed as being limited to the product formed by the specific process recited. In re Hirao et al., 535 F2d 67, 190 U.S.P.Q. 15, see footnote 3 (CCPA 1976). Therefore, the limitations of the stepped impression prior to assembly, extends only over a part a perimeter of the sliding crosspiece, and wherein the sliding crosspiece, prior to assembly, is essentially flat along a remaining part of the perimeter is given little patentable weight.

In regards to claim 18, Bridges et al disclose the sliding crosspiece having a thickness of 0.2 mm to 0.3 mm.

In regards to claim 20, Bridges et al disclose the sliding crosspiece being made of a deformable material.

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Claims 1, 2, 8, 10, 13, 30, 31 and 33 are rejected under 35 U.S.C. 102(b) as being anticipated by US patent 4049298, Foti.

In regards to claim 1, Foti discloses a clamp for connecting a first end of a flexible tubing or pipe to a second end of a pipe, comprising:

a clamping band (13, 54) configured to mate over the first and second ends;  
opposite-lying flange segments (21, 24, 59, 64) extending substantially radially outward from the clamping band, and

means for preventing tension from spreading the clamping band, the spreading prevention means being disposed in a region proximate at least one of the opposite-lying flange segments.

In regards to claim 2, Foti discloses the region being an angle defined between the clamping band and the opposite-lying flange segments.

In regards to claim 8, Foti discloses the spreading prevention means being a welded region for securing the opposite-lying flange segments to the clamping band.

In regards to claim 10, Foti discloses the opposite-lying flange segments being reinforcing plates (28, 30, 68, 70).

In regards to claim 13, Foti discloses the spreading prevention mean being disposed on the opposite lying flange segments.

In regards to claim 30, Foti discloses the first and second ends having a butt jointed transition (13) having a continuously encircling ring arranged at the butt-jointed transition.

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In regards to claim 31, Foti discloses the continuously encircling ring being a bead impressed into the clamping band.

In regards to claim 33, Foti discloses comprising a plastic or highly elastic sealing material being employed on so the intersecting edges.

Claims 1, 13 and 26-29 are rejected under 35 U.S.C. 102(b) as being anticipated by US patent 5362107, Bridges.

In regards to claim 1, Bridges discloses a clamp for connecting a first end of a flexible tubing or pipe two a second end of a pipe, comprising:

a clamping band (50) configured to mate over the first and second ends;  
opposite-lying flange segments (53a,b) extending substantially radially outward from the clamping band, and

means for preventing tension from spreading (57a,b) the clamping band, the spreading prevention means being disposed in a region proximate at least one of the opposite-lying flange segments.

In regards to claim 13, Bridges discloses the spreading prevention mean being disposed on the opposite lying flange segments.

In regards to claim 26, Bridges discloses a saddle (11) covering the clamping gap of the first and second ends defined between the opposite-lying flange segments and a means for preventing leakage at intersecting edges of the saddle and the clamping band.

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In regards to claim 27, Bridges discloses the means for preventing leakage being constructed as a labyrinth seal.

In regards to claim 28, Bridges discloses the intersecting edges and an edge of an associated impression in the clamping band having a labyrinth course.

In regards to claim 29, Bridges discloses the means for preventing leakage being a plastically or elastically deformable sealing material arranged along the intersecting edges.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 23-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hiemstra et al.

In regards to claim 23, Hiemstra et al disclose the claimed invention except for the sealing element having a round cross section. It would have been obvious to one having ordinary skill in the art at the time the invention was made to fabricate the sealing element with a round cross section, since a change in the shape of a prior art device is a design consideration within the skill of the art. In re Dailey, 357 F.2d 669, 149 USPQ 47 (CCPA 1966).

In regards to claim 24, Hiemstra et al disclose the sealing element being made of a material that is resistant to high temperature.

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In regards to claim 25, Hiemstra et al disclose the claimed invention except for the sealing element being made of glass fiber. It would have been obvious to one having ordinary skill in the art at the time the invention was made to fabricate the sealing element of glass fiber, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over Foti.

In regards to claim 32, Foti disclose the claimed invention except for the continuously encircling ring being of plastic or elastomeric material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to fabricate the continuously encircling ring of plastic or elastomeric material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.


### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aaron M Dunwoody whose telephone number is 703-306-3436. The examiner can normally be reached on 7:30 am - 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P Stodola can be reached on 703-306-5771. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Aaron M Dunwoody  
Examiner  
Art Unit 3679

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